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# Beighley v. State Respondent's Brief Dckt. 40319

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IN THE SUPREME COURT OF THE STATE OF IDAHO

WENDY BEIGHLEY,	)	
	)	No. 40319
Petitioner-Appellant,	)	
	)	Teton Co. Case No.
vs.	)	CV-2011-370
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
_____	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF TETON

HONORABLE DARREN B. SIMPSON  
District Judge

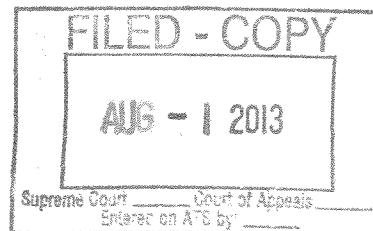
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## STATEMENT OF THE CASE

### Nature of the Case

Wendy Beighley appeals from the judgment entered upon the district court's order dismissing her petition for post-conviction relief.

### Statement of Facts and Course of Proceedings

Wendy Beighley pleaded guilty to lewd conduct with a minor under sixteen. (R., p. 31.) The district court sentenced Beighley to a term of 20 years with seven years fixed. (R., p. 31.) Beighley appealed and filed a Rule 35 motion to reduce sentence. (R., p. 31.) The district court denied the Rule 35 motion, and the Court of Appeals affirmed both the sentence and denial of Beighley's Rule 35 motion. (R., p. 31.)

Beighley filed a petition for post-conviction relief and supporting affidavit. (R., pp. 1-8.) In her petition, Beighley asserted claims of ineffective assistance of counsel, excessive sentence, and erroneous denial of her Rule 35 motion. (R., p. 2.) The district court entered a notice of intent to dismiss the petition. (R., pp. 9-14.) Beighley responded with help from post-conviction counsel. (R., pp. 21-23, 28-29.) The district court dismissed Beighley's excessive sentence and erroneous denial of Rule 35 motion claims. (R., pp. 30-34.) The state then moved for summary judgment on Beighley's remaining claim for ineffective assistance of counsel. (R., pp. 38-48.) After hearing counsel's argument on the motion (but not taking evidence), the district court granted the state's motion. (R., pp. 50-54.) Beighley timely appealed. (R., pp. 56-61.)

## ISSUES

Beighley states the issue on appeal as:

Did the district court err when it summarily dismissed Ms. Beighley's claim that her attorney was ineffective for failing to move to withdraw her guilty plea upon the State's breach of the plea agreement?

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Beighley failed to show the district court erred in summarily dismissing her petition for post-conviction relief?

## ARGUMENT

### Beighley Has Failed To Show The District Court Erred In Summarily Dismissing Her Petition For Post-Conviction Relief

#### A. Introduction

Beighley does not challenge the district court's dismissal of her excessive sentence and denial of Rule 35 motion claims. (Appellant's brief, p. 1; R., p. 13 (these claims were already resolved on direct appeal.) In this appeal, Beighley asserts the district court erred in concluding she failed to establish her trial counsel was ineffective in failing to file a motion to withdraw her guilty plea. (Appellant's brief, p. 6.) The record shows counsel was not ineffective, thus the district court properly dismissed Beighley's claim.

#### B. Standard Of Review

On appeal from summary dismissal of a post-conviction petition, the appellate court reviews the record to determine if a genuine issue of material fact exists, which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. Matthews v. State, 122 Idaho 801, 807, 839 P.2d 1215, 1221 (1992); Aeschliman v. State, 132 Idaho 397, 403, 973 P.2d 749, 755 (Ct. App. 1999). Appellate courts freely review whether a genuine issue of material fact exists. Edwards v. Conchemco, Inc., 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986).

#### C. Beighley's Petition Failed To State A Genuine Issue Of Material Fact

A claim for post-conviction relief is subject to summary dismissal pursuant to I.C. § 19-4906 "if the applicant's evidence raises no genuine issue of material

fact” as to each element of petitioner’s claims. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007) (citing I.C. § 19-4906(b), (c)); State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003). Although a court must accept a petitioner’s un rebutted allegations as true, it need not accept mere conclusory allegations, unsupported by admissible evidence, or conclusions of law. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001)). Also, factual allegations that are “clearly disproved by the record” are insufficient to support granting the relief requested. Kelly v. State, 149 Idaho 517, 521, 236 P.3d 1277, 1281 (2010) (citation omitted). In this case, Beighley’s petition claimed ineffective assistance by trial counsel.

1. An Ineffective Assistance Of Counsel Claim Requires Demonstration Of Deficient Performance And Prejudice

To prove a claim of ineffective assistance of counsel, a post-conviction petitioner must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). With respect to deficient performance, a petitioner “must show that counsel’s representation fell below an objective standard of reasonableness.” Harrington v. Richter, 131 S.Ct. 770, 787 (2011) (citations and quotations omitted). In considering an ineffective assistance of counsel claim, the courts apply “a strong presumption that counsel’s representation was within the wide range of reasonable professional assistance.” Id.



To establish prejudice, a petitioner must show a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different. Harrington, 131 S.Ct. at 787. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citations and quotations omitted). "It is not enough to show that the errors had some conceivable effect on the outcome of the proceeding." Id. Rather, "[c]ounsel's errors must be so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id.

2. Beighley Failed To Allege Facts Demonstrating She Was Entitled To The Relief Requested

In her petition and supporting affidavit, Beighley asserted her trial counsel, Faren Eddins, was ineffective by refusing to withdraw her guilty plea upon her request. (R., pp. 3, 6.) However, Beighley never made such a request; Beighley later clarified that while her appeal was pending, she attempted to contact Eddins several times but was unsuccessful, thus acknowledging that Eddins did not refuse to act upon her request. (R., p. 28.) Indeed, Beighley's response to the notice of intent to dismiss her petition reflects that Eddins told Beighley's post-conviction counsel he never received a request from Beighley to withdraw her guilty plea. (R., p. 23.) Beighley failed to identify any supporting evidence that she ever asked Eddins to withdraw her guilty plea.

As to her assertion she was unable to reach Eddins during the pendency of her appeal, such allegation fails to establish deficient representation by Eddins. Beighley indicated that she attempted to contact Eddins about withdrawing her plea only *after her appeal was pending*, when Eddins was no

longer Beighley's counsel of record. (R., p. 28.) Accordingly, Beighley did not establish deficient performance or prejudice, and her ineffective assistance of counsel claim was properly dismissed.

Further, even if Beighley had asked trial counsel to move to withdraw her guilty plea before the appellate process, Beighley has shown no valid basis for the district court to grant it. A motion to withdraw guilty plea is governed by I.C.R. 33(c), and requires a showing that withdrawal after sentencing is needed "to correct manifest injustice," such as where such plea is entered involuntarily. State v. Nath, 141 Idaho 584, 586-87, 114 P.3d 142, 144-45 (Ct. App. 2005) (citing I.C.R. 33(c)). The record does not support that Beighley entered her plea involuntarily, but that she simply received a harsher sentence than she expected. (5/11/12 Tr. p. 8, Ls. 1-5.) Counsel will not be deemed ineffective for filing a motion that would not have succeeded. See Cook v. State, 145 Idaho 482, 492, 180 P.3d 521, 531 (Ct. App. 2009). Thus the record does not support that, had Beighley made a timely request of trial counsel, his failure to move to withdraw her guilty plea amounted to deficient performance.

In her petition, Beighley states, "there is a clear breach in [sic] of the plea agreement." (R., p. 3.) However, the record supports no such breach. Petitioner's response to the notice of intent to dismiss reflects that Beighley had agreed to plead guilty to one count, and in exchange one count would be dismissed. (R., p. 22; see 37799 R., p. 33.) Also, the state agreed it would not object to a withheld judgment. (37799 R., p. 33.) Beighley acknowledges that the state "did not expressly object to a withheld judgment." (Appellant's brief, p.

9.) However, Beighley argues the state tacitly objected to a withheld judgment by referring the district court to the recommendations in the presentence investigation report, and asking the district court to weigh the information before it appropriately. (Appellant's brief, pp. 9-10.) Beighley cites no legal authority that the state's closing comments are tantamount to a breach of plea agreement. Nonetheless, Beighley asserts her trial counsel performed deficiently by not objecting to the state's supposed breach.

Notably, defense counsel's decision whether to object and thus potentially emphasize the state's subtle reference to the presentence investigator's recommendation at sentencing is a tactical one. A reviewing court will not second-guess such decisions absent showing it was made due to "inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective review." State v. Shackelford, 150 Idaho 355, 382-83, 247 P.3d 582, 609-10 (2010). Beighley has made no showing that trial counsel was inadequately prepared, ignorant of the law, or otherwise fell short of performing satisfactorily. Indeed, examining a pre-sentence report and weighing its information appropriately – as suggested by the state in its alleged breach – are expected of the district court in rendering sentence. See I.C.R. 32; State v. Windom, 150 Idaho 873, 876, 253 P.3d 310, 313 (2011) (when an appellate court reviews a sentence to determine if it was reasonable in light of the facts and considering the objectives of protecting society, deterrence, rehabilitation, and retribution or punishment).

Given the strong presumption that counsel perform within an acceptable range of reasonableness, Beighley has failed to raise a genuine issue of fact that her trial counsel was deficient, or that prejudice resulted. Harrington, 131 S.Ct. at 787. Accordingly, Beighley did not establish her ineffective assistance of counsel claim, and thus has not shown the district court erred in summarily dismissing her post-conviction petition.

#### CONCLUSION

The state respectfully requests that the Court affirm the district court's order summarily dismissing Beighley's post-conviction petition.

DATED this 31st day of July, 2013.

  
\_\_\_\_\_  
DAPHNE J. HUANG  
Deputy Attorney General

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of July, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SPENCER J. HAHN  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

  
\_\_\_\_\_  
DAPHNE J. HUANG  
Deputy Attorney General

DJH/pm